

Fisheries (Ireland) Bill.

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SCHEDULE.

A
B I L L

TO

Amend the Laws relating to the Fisheries of Ireland.

A.D. 1873.

WHEREAS it is expedient to amend the laws relating to the Fisheries of Ireland :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as "The Fisheries (Ireland) Act, 1873." Short title of Act.

2. This Act, so far as is consistent with the tenor thereof, shall be construed with the Acts relating to Salmon Fisheries in Ireland, and herein referred to as "the Salmon Fisheries Acts;" and the definitions of words and expressions now in force in the said Salmon Fisheries Acts shall apply to the same words and expressions when used in this Act, but so as to include "a head weir" under the expression "fixed net." Construction of Act.

3. In this Act the following words shall have the meanings herein-after assigned to them respectively, unless there be something in the subject or context repugnant thereto; namely, Interpretation.

"District" means any district having a board of conservators :

20 "Person" includes a board of conservators :

"Prescribed" means prescribed by any rule or order to be made under the authority of this Act.

4. From and after the passing of this Act, section six of the Salmon Fishery (Ireland) Act, 1863, shall be and the same is hereby repealed : Provided always, that such repeal shall not affect any act done, liability incurred, or proceedings pending at the time of the passing of this Act. Repeal of 26 & 27 Vict. c. 114, s. 6.

[Bill 181.]

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A.D. 1873.

Certificates
as to legality
of fixed nets
or fixed
engines
granted
before Act
declared
conclusive.

5. Every certificate given before the passing of this Act by the Special Commissioners for Irish Fisheries, or by the Inspectors of Fisheries for the time being acting under the authority of the Salmon Fishery (Ireland) Act, 1869, in pursuance of or purporting to be in pursuance of section six of the Salmon Fishery (Ireland) Act, 1868, 5 or by the Inspectors of Irish Fisheries in pursuance of or purporting to be in pursuance of the said section six of the said last-mentioned Act, or of section sixteen of the Fisheries (Ireland) Act, 1869, shall be subject to appeal as herein-after mentioned, and if unappealed from or as confirmed or amended on appeal, such certificate shall, 10 when recorded in manner prescribed by this Act, as against Her Majesty, her heirs and successors, and all persons whomsoever, and for all purposes whatsoever, be a conclusive adjudication of the legality of the fixed net or fixed engine therein described, and that the person therein named was at the date of such certi- 15 cate the person specified in the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, as entitled to exercise the right given by the said Act.

Certificate
as to certain
fixed nets or
engines.

6. Where any fixed net or fixed engine, other than a bag net 20 prohibited by "The Salmon Fishery (Ireland) Act, 1868," was in use for catching salmon and trout during the open season of one thousand eight hundred and sixty-two, and any person claims to have erected the same in pursuance of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter 25 one hundred and six, the Inspectors of Irish Fisheries may, on proof being given to their satisfaction that such fixed net or fixed engine has been erected in pursuance of the said provisions, give a certificate to that effect; such certificate may be in the Form in the schedule to this Act, with such variations as the case may 30 require; and a map or plan showing the situation of such fixed net or fixed engine shall be delineated upon every such certificate.

A certificate given in pursuance of this section shall be subject to appeal as herein-after mentioned. If unappealed from, or as confirmed or amended on appeal, such certificate shall, when recorded 35 in manner prescribed by this Act, as against Her Majesty, her heirs and successors, and all persons whomsoever and for all purposes whatsoever, be a conclusive adjudication of the legality of the fixed net or fixed engine therein described.

Orders or
certificates as
to legality of

7. Subject to such appeal as is by this Act provided and to the 40 powers by this Act conferred upon the Inspectors of Irish Fisheries

in relation to free gaps, every order declaring the legality of any fishing weir made by the Special Commissioners for Irish Fisheries before the passing of this Act, and every such order which shall be made by the Inspectors of Irish Fisheries after the passing of this Act, in pursuance of or purporting to be in pursuance of section seven of the Salmon Fishery (Ireland) Act, 1863, shall, when recorded in manner prescribed by this Act, as against Her Majesty, her heirs and successors, and all persons whomsoever and for all purposes whatsoever, be a conclusive adjudication of the legality of such fishing weir.

A.D. 1873.
Fishing weirs
declared
conclusive.

8. The Inspectors of Irish Fisheries may by order under their hands and seal direct and enforce the making of free gaps in the manner required by the Salmon Fishery (Ireland) Act, 1863, and prescribe the site, position, dimensions, and construction of such free gaps, and determine every dispute concerning the same. Any free gap in any fishing weir which has been made in compliance with the order of the Special Commissioners for Irish Fisheries before the passing of this Act, or which shall be made after the passing of this Act in compliance with the order of the Inspectors of Irish Fisheries, or which has been or shall be approved of by any order of such Commissioners or Inspectors declaring such weir with such gap to be legal, shall, when such order has been recorded in manner prescribed by this Act and so long as such order shall continue in force, be deemed to be the legal free gap required in such weir by the Salmon Fishery (Ireland) Act, 1863, and every person liable to maintain and not maintaining such free gap in the manner so directed or approved of as aforesaid, shall be liable to the penalties provided by the Salmon Fishery (Ireland) Act, 1863, for not maintaining a legal free gap in such weir.

Power of
Inspectors
to prescribe
making of
free gaps.

9. Whenever it shall appear to the Inspectors of Irish Fisheries that, by reason of any change in the bed or flow of the stream, or from any other cause, natural or artificial, any free gap in any weir is not in accordance with the provisions of the Salmon Fishery (Ireland) Act, 1863, the said Inspectors may from time to time, either of their own motion, or on complaint of any person or persons, and after due inquiry by order under their hands and seal, direct that all or any previous orders or order in respect of such gap shall be rescinded, altered, or varied, and may further by order prescribe such changes or alterations to be made in such weir or gap as shall seem to them necessary to make such weir or gap conformable to

Power of
Inspectors
to make
new orders
altering gap.

A.D. 1873. the provisions of the Salmon Fishery (Ireland) Act, 1863; and when such order has been recorded in manner prescribed by this Act, and so long as such order shall continue in force, every person who shall neglect or fail to construct or maintain such free gap in conformity with such order shall be liable to the penalties provided by the Salmon Fishery (Ireland) Act, 1863, for not constructing or maintaining a legal free gap in such weir. 5

No certificate or order to be given except after public inquiry.

10. No certificate shall be given or order made by the Inspectors of Irish Fisheries under this Act, except after an inquiry held in public as by this Act provided. 10

The Inspectors of Irish Fisheries shall cause notice of their intention to hold any such inquiry to be published in some daily Dublin morning newspaper, and also in some newspaper circulating in the district in which the fixed net, fixed engine, weir, or free gap in respect of which such inquiry is intended to be held is situate. 15 Such notice shall specify the time when and the place where such inquiry is intended to be held.

Such notices shall be published at least twenty-eight days before the time at which any court mentioned therein is appointed to be held. The said Inspectors may from time to time alter any time or place mentioned in such notices on giving notice of such alteration in such manner as the said Inspectors may think best calculated to insure to the parties interested knowledge of such alteration.

The production of a copy of a newspaper containing any such notice shall for the purposes of this Act be evidence of such notice having been published at the time at which the newspaper bears date. 25

Persons who may appear on hearing in respect of claim to a certificate or in respect of weir or free gap.

11. The person claiming to be entitled to a certificate or order, and the Board of Conservators of the district in which the fixed net, fixed engine, weir, or free gap in respect of which such claim is made, and also any person who alleges that his rights may be affected by such claim, may appear at and be heard before such court. 30

Certificates and orders to be recorded.

12. Every certificate or order under the Salmon Fishery (Ireland) Act, 1863, or the Fisheries (Ireland) Act, 1869, or this Act, shall if 35 unappealed from be recorded in the office of the Inspectors of Irish Fisheries within six months from the date of the same, or in case such certificate or order shall have been given or made before the passing of this Act, within seven months from the passing of this Act, and every such certificate or order if appealed from shall be 40

recorded in the said office within three months after the final determination of such appeal. A.D. 1873.

Any such certificate or order may be recorded by transmitting the same in a registered letter addressed to the secretary of the said Inspectors at their office in Dublin, or by leaving the same at the said office.

The secretary of the said Inspectors shall file a copy of such certificate or order in the office of the said Inspectors, and shall distinguish the same by a number, and he shall endorse upon the original of such certificate or order a memorandum stating the date of the recording thereof and the number distinguishing the same, and such memorandum shall be conclusive evidence that the certificate or order upon which the same is endorsed was duly recorded upon the day stated therein, and he shall forthwith retransmit such original certificate or order so endorsed to the person from whom he received the same.

13. If any person feels aggrieved by any certificate or order granted or made before the passing of this Act, and declared by sections five and seven of this Act (subject to appeal) to be conclusive, or if any person feels aggrieved by any order or decision of the Inspectors of Irish Fisheries [and for the purposes of an appeal the dismissal of a complaint shall be deemed to be a decision] made after the passing of this Act, the person aggrieved may appeal as follows, and not in the manner prescribed by the Salmon Fisheries Acts; that is to say, Mode of appeal.

1. The appeal shall, in the first instance, be to the Court of Queen's Bench in Ireland :
2. The appeal shall be instituted by lodging in the office of the clerk of the rules of the said court a notice of appeal in the prescribed form :
3. Such notice, when the appeal is from an order or certificate made before the passing of this Act, shall be lodged in the said office within six months after the passing of this Act, and when the appeal is from any order, certificate, or decision made after the passing of this Act such notice shall be lodged in the said office within one month after the making of the same :
4. A copy of such notice shall, within the prescribed time, be served upon the secretary of the Inspectors of Irish Fisheries and upon the prescribed persons :
5. No appeal shall be heard unless the appellant, with or without a surety or sureties as the Court of Queen's Bench may pre-

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A.D. 1873.

scribe, shall, within the prescribed time, enter into a recognizance before the prescribed person and in the prescribed sum, conditioned to prosecute without delay the appeal, and to submit to the judgment of the Court of Queen's Bench and any court of appeal, and to pay such costs as may be awarded : 5

6. The Inspectors of Irish Fisheries shall within the prescribed time, after receipt of a copy of such notice of appeal, on the requisition of the appellant or of any person upon whom a copy of such notice has been served and upon payment of the prescribed fees, furnish to such appellant or person copies of 10 any documents, maps, or plans in their custody or subject to their control, which were produced at the hearing or inquiry at which the certificate, order, or decision appealed against was made, and also any notes of evidence taken at such hearing or inquiry which such appellant or person may 15 require ; and the said inspectors shall within the prescribed time, after receipt of a copy of such notice of appeal transmit to the Clerk of the Rules of the said Court all documents, maps, or plans in their custody or subject to their control, and which were produced at such hearing or inquiry : 20

7. When notice of appeal under this section has not been given within the time aforesaid, or has been given in good faith, but through mistake some act necessary to perfect the appeal has been omitted, the Court of Queen's Bench may extend the time for giving such notice or may make such order in 25 reference thereto as may seem just :

8. Upon the hearing of an appeal every question of law and fact involved in or material to the subject matter of such appeal shall be open to the said Court ; and the said Court shall have power, if it thinks fit, to receive further evidence by 30 affidavit or *viva voce*, and to direct any disputed issue of fact to be tried before a Judge by a special or common jury at such time and place as the said Court may appoint.

Power of
appeal from
Queen's
Bench.

14. Any party dissatisfied with the decision of the Court of Queen's Bench may appeal therefrom, provided one of the Judges 35 of the said Court dissent from the decision, or provided the said Court in its discretion think fit that an appeal should be allowed, and for the purposes of such appeal, every such decision shall be deemed to be a proceeding of the Court of Queen's Bench within the meaning of the Act of the session of the twentieth and twenty-first years of the 40 reign of Her present Majesty, chapter six.

15. The Court of Exchequer Chamber and the House of Lords shall respectively be courts of appeal from the Court of Queen's Bench for the purposes of this Act.

A.D. 1873.
Courts of
appeal.

16. No appeal from a decision of the Court of Queen's Bench shall be allowed unless notice thereof be given in writing to the other parties or party to the proceedings in the same Court, or their or his attorneys or attorney, and to the Master of the same Court, within six days after the decision complained of, or such further time as may be allowed by the same Court or a Judge, nor unless within one week after such notice the appellant shall enter into a recognizance before a Judge of the said Court of Queen's Bench in such sum, with or without sureties, as such Judge shall think fit, conditioned to prosecute the appeal without delay, and to pay such costs as may be awarded against him in any court of appeal, and to submit to the judgment of such court of appeal.

Notice of
appeal.

17. The appeal from a decision of the Court of Queen's Bench shall be upon a case to be stated by the parties (and in case of difference to be settled by the said Court or a Judge thereof), in which case shall be set forth so much of the proceedings, the evidence, and the decision complained of, as may be necessary to raise the question for the decision of the court of appeal.

Mode of
appeal from
Queen's
Bench.

18. Any Court hearing an appeal under this Act may give judgment affirming, reversing, or modifying the certificate, order, or decision appealed from, and make such order as to the costs incurred in the proceedings previous to such appeal and of such appeal as may be agreeable to justice; and if the said Court alter or modify the certificate, order, or decision appealed against, such certificate, order, or decision so altered or modified by the said Court shall be of the like effect as if it were the certificate, order, or decision of the Commissioners or Inspectors who made the same, and the Inspectors of Irish Fisheries shall have the same powers to enforce the certificate, order, or decision appealed from, if confirmed, or (as the case may be) amended, modified, varied, or altered on appeal, as they would have had to enforce the original certificate, order, or decision, if unappealed from.

Power of
court of
appeal.

The said Court, in cases where it appears expedient so to do, may remit the order, certificate, or decision appealed from to the Inspectors of Irish Fisheries, with such directions as may seem proper.

19. The Court of Queen's Bench, or any three of the Judges of the said Court, whereof the Chief Justice shall be one, may from time to time make, and when made may rescind, annul, alter,

Power to
Queen's
Bench to
make gene-
ral orders.

A.D. 1873. — or add to general rules and orders, and may make new rules and orders, with respect to the following matters:

1. The practice, procedure, and mode of taking evidence in the Court of Queen's Bench in regard to appeals under the provisions of this Act: 5
2. The practice and procedure with regard to trials by jury under the provisions of this Act:
3. The practice and procedure in regard to appeals from decisions of the Court of Queen's Bench under the provisions of this Act: 10
4. The mode of keeping and the time and manner of returning to the Inspectors of Irish Fisheries documents, maps or plans transmitted to the clerk of the rules of the said Court in pursuance of the provisions of this Act:
5. The scale of costs and fees to be charged and allowed under 15 or in respect of such practice and procedure as aforesaid, and the taxation of such costs and fees, and the person or persons by or from and to whom respectively, and the manner in which, such costs and fees are to be paid: Provided always, that all rules or orders relating to the 20 scale of fees, taxation, and persons to or by whom such fees are to be paid shall not be made without the approval of the Commissioners of Her Majesty's Treasury:
6. As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be 25 expedient to make general rules or orders for the carrying out of the provisions of this Act with regard to appeals.

Any rules or orders made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and, if Parliament be not then sitting, 30 within three weeks after the beginning of the then next session of Parliament.

Certificates
not to be
invalid for
informality,
&c.

20. No certificate or order given or made by the Special Commissioners for Irish Fisheries, or the Inspectors of Irish Fisheries in pursuance of or purporting to be in pursuance of "The Salmon 35 Fishery (Ireland) Act, 1863," or of this Act, shall be deemed invalid by reason of the jurisdiction to make the same not appearing on the face thereof, and no such certificate shall be impeached by reason of any informality therein.

Application
of penalties.

21. All penalties imposed by this Act shall when recovered be 40 applied as provided by section nineteen of "The Fisheries (Ireland) Act, 1869."

22. In addition to the powers given to the Inspectors of Irish Fisheries under any other Act of Parliament, it shall be lawful for the said Inspectors holding any inquiry under this Act—

A.D. 1873.

Additional powers of Inspectors at inquiries.

1. To order the person at whose instance any witness shall have been summoned or have attended to pay to such witness such sum as such Inspectors shall think proper for his expenses or loss of time for each day of attending to give evidence; and such sum (whatever the amount thereof) may, in default of payment thereof by such person and at such time as such Inspectors shall appoint, be recovered from such person by civil bill process, and

2. To order any person to be removed from their court who may interrupt the business of the court, or refuse to obey their lawful orders in respect of the same; and it shall be the duty, in the police district of Dublin metropolis, of the Dublin Metropolitan Police, and elsewhere of the Royal Irish Constabulary to attend the court of the Inspectors during its sitting, for the purpose of keeping order therein, and to carry into effect any such orders of the Inspectors as aforesaid.

23. The Report which the Inspectors of Irish Fisheries are required to make in conformity with the provisions of section one hundred and twelve of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, shall be made on or before the last day of May in every year instead of on or before the last day of January as prescribed by the said section.

Amendment of 5 & 6 Vict. c. 105, s. 112, as to time of making annual report.

24. The Inspectors of Irish Fisheries shall cause to be made for their use such seal or seals as they may require, and any certificate, map, plan, order, summons, warrant, or other instrument, or copy thereof, given, made, or issued under the provisions of this Act, and purporting to be sealed with the seal of the said Inspectors, and to be signed by them or any two of them, shall be received in evidence without any further proof.

Common seal of Inspectors.

The description of the net or engine is--

A.D. 1873.

Fill exact
description
of net or
engine.

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Given under our hands and seal this

day of

18 .

} Inspectors of
Irish Fisheries.

Fisheries (Ireland).

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B I L L

To amend the Laws relating to the
Fisheries of Ireland.

(Prepared and brought in by
The *Members of Parliament and Mr. Secretary
Brown*.)

*Ordered, by The House of Commons, to be Printed,
5 June 1813.*

[BELL 1811.]

Truster 2. 02.